

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.18318 of 2015

Bhagwan Dass and others ... Petitioners
Versus

State of Punjab and another ... Respondents

2. CWP No.22109 of 2014

Rajinder Paul and others ... Petitioners
Versus

State of Punjab and another ... Respondents

3. CWP No.24267 of 2014

Jaswant Singh and others ... Petitioners
Versus

State of Punjab and others ... Respondents

4. CWP No.3188 of 2015

Charanjit Singh and others ... Petitioners
Versus

State of Punjab and others ... Respondents

5. CWP No.3698 of 2015

Jaswant Singh and others ... Petitioners
Versus

The State of Punjab and others ... Respondents

6. CWP No.8515 of 2015

Kashmir Singh and others ... Petitioners
Versus

State of Punjab and others ... Respondents

7. CWP No.520 of 2015

Chandu Ram Nandiwal and others ... Petitioners

Versus

State of Punjab and another ... Respondents

8. CWP No.723 of 2015

Rameshwar Dass and others ... Petitioners

Versus

State of Punjab and others ... Respondents

9. CWP No.13622 of 2015

Onkar Kumari ... Petitioner

Versus

The State of Punjab and others ... Respondents

10. CWP No.266 of 2016

Karnail Singh and others ... Petitioners

Versus

State of Punjab and others ... Respondents

Date of Decision: 13.07.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Chatrath, Advocate,
Mr. Sunny Singla, Advocate,
Mr. S.K. Rattan, Advocate,
for the petitioner(s).

Mr. Nikhil K.Chopra, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This order disposes of CWP No.18318 of 2015 titled *Bhagwan Dass and others v. State of Punjab and another*, CWP No.22109 of 2014 titled *Rajinder Paul and others v. State of Punjab and another*, CWP No.24267 of 2014 titled *Jaswant Singh and others v. State of Punjab and others*, CWP No.3188 of 2015 titled *Charanjit Singh and others v. State of Punjab and others*, CWP No.3698 of 2015 titled *Jaswant Singh and others v. The State of Punjab and others*, CWP No.8515 of 2015 titled *Kashmir Singh and others v. State of Punjab and others*, CWP No.520 of 2015 titled *Chandu Ram Nandiwal and others v. State of Punjab and another*, CWP No.723 of 2015 titled *Rameshwar Dass and others v. State of Punjab and others*, CWP No.13622 of 2015 titled *Onkar Kumari v. The State of Punjab and others* & CWP No.266 of 2016 titled *Karnail Singh and others v. State of Punjab and others*.

2. The petitioners retired from service on attaining the age of superannuation while performing the duties of the higher post of Principal/Headmaster in Group-A school cadre in the Punjab Education Department while holding the current duty charge of the higher post for different periods ranging from about 1 to 7 years. Their claim is to fix pension and other pensionary benefits on the basis of the last salary drawn by the petitioners in the higher pay scale while performing duties holding the current duty charge of the superior post. They were also given the additional charge of Drawing and Disbursing Officers in their respective schools.

3. The petitioners place reliance on Rules 2.44, 2.47, 2.52, 6.19 and 6.24 including 4.4(a) (i) of the Punjab Civil Service Rules to fortify their cases for obtaining relief through appropriate orders, writs and directions. It is their case that they were called upon to officiate on the higher post in accordance with rule of seniority vide letter dated June 19, 1992 issued by the department in the lead case. The petitioners may have a right to arrears of difference of pay of the post substantively held and the post on which they have performed duties and responsibilities of the higher post but all the same they have acquired no right to the higher pay scale, unless they were duly promoted to the higher posts while in service. But this does not mean that they have a right to the pay scale of the higher post on the date of retirement for claiming pension admissible to the higher post. In none of these cases has a prayer been made that the petitioners should be promoted to the higher post of Principal/Headmaster in accordance with seniority and then to re-fix pension accordingly. In absence of such a prayer and a declaration by the department that petitioners stood validly promoted as per their turn in the seniority list, the relief prayed for in the petition cannot be granted merely because on the date of superannuation they continued to perform the duties of the higher post holding the current duty charge irrespective of length of such service. It may also be true that a condition in the order giving them the officiating current duty charge of the higher post in their own pay scale may be an argument in their favour on principles of workload but to enhance last pay drawn is another matter which cannot be legally countenanced for absence of substantive promotion.

But this does not mean that they would not be entitled to the higher pay on the principle of equal-work-for-equal-pay on the well recognised doctrine of quantum meruit. However, rate of pension cannot be made dependent on such current duty charge or officiation on the posts of Principal or Headmaster. I would, therefore, not intercede in these cases and on the other hand dismiss the petitions as devoid of merit. There is a difference between the two concepts of pay at par with the higher posts for working on them and right to difference of pay between the two posts for discharging full duties and responsibilities of the promotional post.

4. The court rulings relied upon by Mr. Vikas Chatrath in Pritam Singh Dhaliwal v. State of Punjab and another, 2004 (6) SLR 758: 2004 (4) SCT 403 [para.4]; Gurmej Singh v. State of Punjab, 1995 (3) RSJ 491, 1995 (3) S.C.T. 279 [paras.1 to 3] are occasioned by misreading them into the facts of the instant case. The decision of the learned Single Judge in Sohan Singh, Sub Inspector v. The State of Haryana, 1992 (2) SCT 74 [paras.10 and 11] and of the Supreme Court in State of Punjab v. Nirmal Singh, 2002 (2) S.C.T. 723 [para.2] and BCPP Mazdoor Sangh and another v. NTPC and others, 2007 (4) S.C.T. 724 (paras.26, 29 and 30) are not directly on the point and of no help. It will be useful to read rule 2.44 of the PCS Rules which defines “pay to mean in the scale of the post held by the Government employee, or to which he is entitled by reason of its position in a cadre” and Rule 6.19-C which defines the term “emoluments” when used for the purpose of emoluments reckoning from pension would mean “pay” as defined in Rule 2.44 of the PCS Rules, Vol. 1, Part 1 including dearness pay

as determined by the orders of the Government issued from time to time, which the employee is receiving immediately before his retirement or the date of his death. Rule 6.24 (1) defines “average emoluments” to mean the average calculated up to the last ten months of qualifying service which is applicable to employees retiring after February 29, 1976. These provisions do not contemplate current duty charge and would not hold Mr. Chatrath in good stead to bring relief for his clients and the petitioners in the connected cases.

5. On the other hand, Mr. Nikhil K.Chopra, learned Addl. AG, Punjab appearing for the respondents relies on the ruling in Bidhi Singh v. State of Punjab, 1992 (2) RSJ 19 : 1992 (1) SCT 590 could demolish the case of the petitioners. This is a case of a Government servant sent on deputation to higher post in another department of Government which brought him higher pay/emoluments. The petitioner therein retired while on deputation and was not promoted in his parent Government department before he retired from service. Therefore, the Court held that pensionary benefits have to be determined on the basis of emoluments which the Government employee would have drawn had he not been sent on deputation. The Single Judge in this case has dealt with the provisions of Rules 6.19-C, 2.44 and 6.24 of the PCS Rules which have been held to have no relevance to the case.

6. In U.K. Walia v. Punjab National Bank and others, 2013 (2) RSJ 385, which is also a case of deputation, Court ruled that benefit of higher grade on deputation will not bring with it a right to enhanced pension

on the last pay drawn which has to be calculated in terms of the salary the petitioner would have drawn in the parent Bank on the date of superannuation.

7. Lastly, he relies on an order that I passed in CWP No.13125 of 2015, *Shital Ram v. State of Punjab and others* decided on March 03, 2016 in a case claiming enhancement of pension for discharging duties of Drawing & Disbursing Officer, where it was observed thus:-

“The petitioner’s claim is for his enhancing pension on the ground that he discharged duties of Drawing & Disbursing Officer [DDO] in the substantive rank of Head Master while serving in a Government School.

The State has explained that the petitioner has been compensated for extra work performed as DDO by payment of an allowance.

In such a situation, the extra pay for discharging duties and responsibilities of a DDO does not form part of pay scale prescribed for the post of Head Master. Assigning such duties does not amount to a promotion as it is well settled that the responsibilities of DDO can be given to any Officer to facilitate payment of salaries and other service benefits to the staff on a regular basis. These are in the nature of extra financial duties to facilitate payments of money. The extra payment would not translate in increasing salary in the last pay drawn certificate. Therefore, the prayer for enhancing pension by adding extra payment for extra work towards pension is wholly misconceived.

Consequently, the present writ petition is dismissed.”

8. There is no merit in the contentions raised by the petitioners for re-fixation of pension and retirement benefits. The State is under no legal

obligation to satisfy the claim. Nor is a case made out for awarding arrears of difference of pay of the post held substantively before retirement and discharge of duties of the higher post as it is a pure money claim against which limitations run expiring the remedy of recovery, if a suit were brought on the same cause of action in a civil court. The petitioners must have first secured promotion to higher post in accordance with seniority, eligibility and service record before staking claim on pay of the higher post as a matter of right. This is not the case. The petition is, accordingly, dismissed but without any order as to costs. Pending applications, if any, stand disposed of.

(RAJIV NARAIN RAINA)
JUDGE

13.07.2016
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